1954

File No. O. Wts & Msrs/1

Legal **DEPARTMENT**

A. **BRANCH**

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Subject:

Opinions under the Bombay Weights and Measures Act 1932

p. 9

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Ltd. Sec t. Sl p. 21 A

293-A

C O N T E N T S.

Legal Department File No. O. Wts. & Measures/1941.

S.No.	Compilation No.	Subject.	Pages.
		Opinions under the Bombay Weights and Measures Act, 1932.	
1.	O.No.4241 dt. 9-5-41.	Question whether weight used in a particular case are for the purpose of trade or for purposes of internal convenience....	1 - 2
2.	O.No.841 Confl. 6 - 5 41.	Question whether there is any legal objection to give an assurance to Mr.Asarpota that no prosecution will be launched against him-- provided he helps in the prosecution of Mr. Kantawala	3 - [illegible]
3.	O.No.5417 17-6-41.	Sec. 34. Question whether offence is committed if it is proved that possession of incorrect weighing instrument was not for trade.	7 - 8
4.	O.No.6192 16 - 7 - 41.	Question regarding amendment of sections 32 and 39 of the Act.	9 - 10

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Office of the R.L.A.

The Remembrancer of Legal Affairs (Mr.Dhurandhar) has already expressed an opinion on the legal aspect of these dealings. No useful prupose is likely to be served by any further attempt to clarify the legal issues involved in this case.. Whether weights used in a particular case are for purposes of trade or for purposes of internal convenience will in each case be a question of a ~~x~~ fact dependent upon the circumstances of each transaction. If the weighing of the pledged articles is not solely or merely for the Bank's own verification or internal management, but also for satisfying the pledgor customer of the Bank, such weighing will be for the purpose of the dealing or contract viz. the loan and pledge between the Bank and its customer. The explanation to section 12 is not in any way controlled or governed by the language of sub-section(1) of that section and according to this explanation any dealing or any contract between two or more parties will be covered by the expression /'trade'. There is therefore no cause for revising the advice already given in the last sentence in R.L.A's No.10023, dated the 15th November 1940

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Remembrancer of Legal Affairs.

U.R. to G.D. No.4241 dated the 9th May 1941.

M.V.V.
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R.I.No.3983
1.5.41.

Submitted.

Please see the letter from the Director of Industries at pp.1 - 3 ante. It appears that it is proposed to prosecute one Mr. D. P. Kantawala for forging beam-scales for sale presumably under sect.38 of the Bombay Weights & Measures Act, 1932 (Bom.XV of 1932). One Mr. C.H. Asarpota who was a partner in the firm of Mr. Kantawala has come forward with information that numerous beam-scales bearing forged stamps were put for sale by Kantawala in the market and is prepared to point out the place where the instruments with which forgeries were committed are lying. It appears that he is likely to be helpful in the prosecution of Mr. Kantawala. He is however prepared to help the prosecution provided an understanding is given to him that no prosecution will be launched against him. The Director of Industries has already given him such an assurance on condition that Mr. Asarpota helps in the prosecution against Kantawala and requests for the approval of Govt. to that course. It is proposed to inform the Director of Industries that his action is approved. The question for the consideration of the R.L.A. is whether there is any legal objection to approving of the Director's action.

2. Sect.44 of the Bombay Weights and

P.T.O.

Measures Act, 1932, provides that no prosecution under the Act shall be instituted except by or with the previous sanction of the Collector or any officer specially empowered by him or by Govt. in this behalf. The Director of Industries appears to have been authorised by Govt. to sanction prosecutions under this section and presumably he will not give sanction under sect.44 of and when the question of prosecuting Asarpota in connection with his affairs as partner of Kantawala arises. Subject to this restriction there is no legal objection to approving the Derector's action. The view taken by the Public Prosecutor for Bombay in para 4 of his opinion dated 7.4.1941 to be correct.

Sd.
2/5/41.
A.S.

The papers may be seen and returned.

If Govt. does not intend, as is presumably the case, to give Mr. Asarpota any assurance regarding any offence under the Act unconnected with the present transaction which he may have committed or may possibly commit in future, it would be adviseable to clarify the position in the letter at p.11.

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A.L.R. As in A.S's note.
Sd. dt.3/5.

R.L.A. Sd/-
3/5.

M.V.V.
26/4.

Office of the R.L.A.

Seen and returned.

If Government does not intend, as is presumably the case, to give Mr. Asarpota any assurance regarding any offence under the Act unconnected with the present x transaction which he may have committed or may possibly commit in future, it would be advisable to clarify the position in the letter at p. 11.

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Remembrancer of Legal Affairs.

U.R. to G.D. No.241 Confl. dated the 6th May 1941.

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Office of the R.L.A.

No. offence is committed if the accused rebuts the presumption and establishes for purposes of section 34 of the Bombay Weights and Measures Act, 1932, that his possession of the incorrect weighing instrument was not for trade. The Magistrate finds that the accused has rebutted the presumption; that finding is not perverse, and no appeal is necessary on this point.

8. As regards the accused's refusal to produce the said weighing instrument for inspection, clearly no duty to produce is cast on him by section 39 read with section 32 of the Act, provided the instrument was not possessed for trade. On the finding referred to above in this respect, there is no ground for appeal against the acquittal.

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16/6.
Remembrancer of Legal Affairs.

U.R. to G.D. No.5417, dated the 17th June 1941.

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In R.L.A's U.R. to G.D. No.5417, dated the 17th June 1941, the G.D. was informed that there was no ground of appeal against the order of acquittal of Mr. Shetty for offences under section 39 read with section 22 of the Bombay Weights and Measures Act, 1932. The G.D. now says that as in the R.L.A's opinion referred to above no mention has been made as to the desirability of amending sections 22 and 39 of the Act, it is presumed that the R.L.A. does not consider it necessary to amend these sections as suggeste in the judgment and recommended by the Director of Industries.

2. Attention in this connection is invited to the concluding paragraph of A.L.R's note, dated 13-6-41 which was not included in the reply to G.D. It is stated there that the suggestions and criticisms of the Magistrate as to the drafting of sections 22 and 39 of the Act are as gratuitous as the; are superfluous and that the language of the sections is plain to any careful reader and not at all misleading. If therefor approved, the G.D. may be informed that the presumtion made in para.3 of the G.D. office note, dated 25-6-41 is correct. The language of sections 22 and 39 of the Bombay Weights and Measures Act, 1932, is plain and not misleading, and therefore it is not necessary to amend those sections.

Sd.
5/7/41.

A.S.

P.T.O

I agree

Papers may be seen & returned ǁ A

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A.L.R. As at A

Sd/-
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R.L.A. Sd.
dt. 14/7.

Office of the R.L.A.

Seem and returned.

Sd/- P.N.MOOS.

Remembrancer of Legal Affairs.

U.R. to G.D. No.6192, dated the 16th July 19

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